

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

1:12-cv-01165-AWI

1:02-cr-05408-AWI

Plaintiff / Respondent,

v.

**ORDER DENYING PETITIONER'S  
MOTION FOR FAST TRACK  
REDUCTION**

VICTOR SANCHEZ SEPULVEDA,

Defendant / Movant.

On August 2, 2002, Defendant / Movant Victor Sanchez Sepulveda ("Movant") was convicted by a jury of conspiracy to aid and abet the manufacture of methamphetamine, attempted possession of pseudoephedrine with intent to manufacture methamphetamine, and use of a communications facility to facilitate a drug trafficking crime.

On July 16, 2012, Movant filed a motion seeking reduction in sentence based on 18 U.S.C. § 3582(c)(2) and 18 U.S.C. § 3553(a). Movant alleges that he is eligible for the so called "Fast Track" reduction, allowing up to a four level downward departure pursuant to U.S.S.G. § 5K3.1. For the reasons set forth below, Movant's motion will be DENIED.

1 A Departmental Policy on Early Disposition Memorandum was promulgated to all  
2 United States Attorneys by the Office of the Attorney General on January 31, 2012. In its  
3 introduction it provides:

4 This memorandum sets forth the revised policy and criteria for fast-track  
5 programs. It provides only internal Department of Justice guidance. It is not  
6 intended to, does not, and may not be relied upon to create any rights, substantive  
7 or procedural, enforceable at law by any party in any matter civil or criminal, nor  
8 does it place any limitations on otherwise lawful litigative prerogatives of the  
9 Department.

10 Department Policy on Early Disposition or “Fast Track” Programs, 25 Fed.Sent.R. 53, 2012 WL  
11 6620439 (Jan. 31 2012). Contrary to Movant’s suggestion, the memorandum does not require  
12 (nor does it have the authority to grant) retroactive application of early disposition reductions or  
13 provide any substantive rights.

14 Title 18 of the United States Code Section 3582(c)(2) provides that “the court may not  
15 modify a term of imprisonment once it has been imposed except in the case of a defendant who  
16 has been sentenced to a term of imprisonment based on a sentencing range that has subsequently  
17 been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o)...” *See Dillon v.*  
18 *United States*, 560 U.S. 817, 826 (2010) (explaining that a Section 3582 reduction is authorized  
19 only “if such a reduction is consistent with applicable policy statements issued by the Sentencing  
20 Commission”—namely, § 1B1.10. The statute thus establishes a two-step inquiry. A court must  
21 first determine that a reduction is consistent with § 1B1.10 before it may consider whether the  
22 authorized reduction is warranted, either in whole or in part, according to the factors set forth in  
23 § 3553(a).”) The Sentencing Commission’s policy is explicit: “A reduction in the defendant’s  
24 term of imprisonment is not consistent with this policy statement and therefore is not authorized  
25 under 18 U.S.C. § 3582(c)(2) if (A) none of the amendments listed in subsection (c) is applicable  
26 to the defendant.” U.S.S.G. § 1B1.10(a)(2). *See also id.* app. note 1(A) (“Eligibility for  
27 consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in  
28 subsection (c) that lowers the applicable guidelines range.”). A memorandum issued by the  
Office of the Attorney General is not an act of the Sentencing Commission to lowered the  
sentencing range pursuant to 28 U.S.C. § 994(o) and the Sentencing Commission has not

1 otherwise lowered the guideline range for any of the above-listed offenses. Accordingly,  
2 Movant's claim of entitlement to relief pursuant to section 3582 is in error.

3 Finally, Movant does not meet the "[m]inimum [r]equirements for 'Fast Track' [p]lea  
4 [a]greement" set out by the memorandum. In order for a defendant to be eligible for a "Fast  
5 Track" departure, by the terms of the memorandum, he or she must be charged with or convicted  
6 of illegal reentry under 8 U.S.C. § 1326, "enter into a written plea agreement... stipulat[ing] to  
7 the facts of the prior conviction and removal" "within 30 days of ... being taken into custody on  
8 federal charges..." and agree to waive appeal and most grounds for collateral attack. DOJ Memo  
9 to Prosecutors: Department Policy on Early Disposition or "Fast Track" Programs, 25  
10 Fed.Sent.R. 53, 55; *see U.S. v. Valencia*, 2012 WL 4888470, at \*1 (N.D. Cal. 2012). Movant was  
11 neither charged nor convicted of illegal reentry nor did he enter a plea of guilty. For this reason,  
12 Movant is ineligible for "Fast Track" departure.

13 For the foregoing reasons, Movant's motion is DENIED.

14  
15 IT IS SO ORDERED.

16 Dated: April 15, 2014

  
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SENIOR DISTRICT JUDGE